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COMMISSION ON HUMAN RIGHTS
Inter-sessional open-ended working group
for the elaboration of a draft optional
protocol to the Convention on the Rights
of the Child on the sale of children,
child prostitution and child pornography
Fourth session
19-30 January 1998

COMMENTS ON THE REPORT OF THE WORKING GROUP

Note by the Secretary-General

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Introduction

1. In paragraph 9 (e) of its resolution 1997/78 entitled "Rights of the child", the Commission on Human Rights requested the Secretary-General to transmit the report of the working group on the question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (E/CN.4/1997/97) to Governments, relevant specialized agencies, the Committee on the Rights of the Child, the relevant Special Rapporteur and intergovernmental and non-governmental organizations and to invite their comments in time for circulation prior to the next session of the working group.

2. Pursuant to this resolution, the Secretary-General, on 30 July 1997, addressed requests to Governments, intergovernmental and non-governmental organizations concerned, as well as to the Special Rapporteur on the sale of children, child prostitution and child pornography and the Committee on the Rights of the Child, for their comments.

3. As of 18 November 1997, replies have been received from the Governments of Guatemala, Lebanon and Mauritius.

4. Replies were also received from the Council of Europe, the International Labour Office, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the United Nations Industrial Development Organization and the World Bank.

5. Comments were submitted by the American Association of Jurists, the NGO Group for the Convention on the Rights of the Child focusing on sexual exploitation of children and the World Alliance of Young Men's Christian Association.

6. The present report contains a summary of the substantive replies received. Any additional replies will be reproduced in an addendum to the present report.

I. COMMENTS RECEIVED FROM STATES

Guatemala

[Original: Spanish]
[1 October 1997]

7. The State of Guatemala, having analysed the substance of the draft optional protocol to the Convention on the Rights of the Child, submits the following observations to the Committee:

8. At the present time our country has reached a post-armed conflict stage, having inherited problems which, in general being of an economic nature, have given rise to high rates of poverty and extreme poverty for a large part of the population. In the circumstances, the situation of children, who constitute the vulnerable segment of its population, is particularly difficult and has resulted in their becoming the target of abuses and serious offences,

such as the sale of and traffic in children, the ill-treatment and abuse of children, prostitution and pornography and, in certain cases, kidnappings.

9. This distressing situation has had a major impact on Guatemalan society since it has affected the family unit and brought about the disintegration of the family as one of the social problems faced by the country.

10. A study carried out during 1996 by the non-governmental organization Human Rights Office of the Archbishopric of Guatemala reveals the existence of a number of risk factors, both within as well as outside the family, which to a great extent explain the vulnerability of boys and girls to sexual exploitation, violence and abuse within the family unit itself. Most of those who are abused and exploited are girls, although boys are also affected.

11. In view of this growing problem, the Government has been seeking suitable ways of combating and eradicating these deplorable activities, one of the most important being its accession in 1990 to the Convention on the Rights of the Child.

12. In Guatemala, provisions and regulations designed to protect the rights of the child are set out in the Penal Code (sections V, VI and VII, under the headings Corruption of Minors and Offences against Decency) and in the Minors Code which has been in force since 1970.

13. Because of various shortcomings still inherent in the administration of justice, these instruments have not yet had a positive impact from the standpoint of putting an end to violations of children's rights in Guatemala. For this reason, the Commission for the Convention on the Rights of the Child (PRODEN) was established jointly by non-governmental and governmental organizations and bodies in order to monitor, promote and disseminate information about these rights.

14. PRODEN comprises governmental and non-governmental organizations as well as departmental committees, which are coordinated by Guatemala's Human Rights Procurator, who has assumed the task of bringing Guatemala's legislation on children into line with the principles set forth in the Convention.

15. One of PRODEN's main achievements is the elaboration of a Children and Young Persons Code which will enter into force on 27 March 1998 and replace the former Minors Code that has been in effect since 1970. Although it was the original intention to give effect to the new Code on 27 September 1997, the Congress of the Republic, by Decree No. 84-97 of 25 September 1997, decided to delay its entry into force by six months, considering that the human and material resources available at the present time were not sufficient to ensure its proper application, on the assumption that an additional six months would be enough to make good any shortcomings and ensure the effective application of this instrument.

16. In the opinion of various bodies dealing with children and young persons, this new code constitutes a sound response to the real needs and problems being encountered at the present time by Guatemalan children and young persons since it takes into account their special characteristics and most pressing requirements.

17. In view of the nature of the problem posed by children in Guatemala and its urgency, we note with satisfaction that the draft protocol provides for the penalization and prosecution of offenders responsible for committing various offences, such as the sale of children, the use of children in prostitution, the use of children in pornography and the use of children in sex tourism, and places States under an obligation to define such offences in their domestic legislation in accordance with the provisions of the protocol. It is important that these offences should be defined in the draft protocol so that their meaning in law is based on uniform criteria.

18. The State of Guatemala has a special interest in supporting any initiative designed to ensure compliance with the rights of children and young persons since it has a predominantly young population of an average age of 17, of whom 17 per cent (1,753,000) are under four years of age and 51.6 per cent (approximately 5,176,000) are under 18 years.

19. The State of Guatemala regards the draft protocol as a valuable instrument that will effectively assist States in shaping and elaborating their domestic policies with a view to creating a common front in the struggle to combat and eradicate practices which constitute violations of the human rights of children and which are not only contrary to moral and spiritual principles but also a threat to society itself as the motive force behind the development and advancement of countries.

Lebanon

[Original: Arabic]
[15 September 1997]

20. The Government of Lebanon made the following comments on the draft optional protocol:

(a) The sale of children: In chapter II concerning the sale of children, the Government of Lebanon sees no need to mention "for any form of compensation or benefit".

(b) Child prostitution: According to Lebanon, there is no need to mention "even with the consent of the child, for any form of benefit". In the case of children under 18 years of age who become potential delinquents due to their use in prostitution, it expresses no objection to a reformative measure being taken against them with a view to their rehabilitation, even though they are victims rather than offenders, in order to safeguard both their physical and their mental health given the direct or indirect effect of prostitution in these two fields.

(c) Extradition of offenders: No objection is made to approval of the content of this paragraph since it is consistent with the general provisions adopted in international conventions concerning this matter and, in particular, its content is compatible with protection of the judicial sovereignty of the country concerned in the event of its approval of the draft. This applies to both judicial assistance and seizure confiscation.

(d) Protection of children: The Government of Lebanon believes that the principle of the best interests of the child should be applied, in accordance with the articles of the Convention on the Rights of the Child, which was adopted at New York in 1989 and it was ratified in 1990. This means that children should be treated solely as the victims of aggressors.

(e) The information media: The launching of campaigns involving the information media should be encouraged in order to sensitize people and inform them of the gravity of the danger arising from the sale of children, child pornography and child prostitution. This also means that the publication of programmes that might help encourage such exploitation should be avoided.

(f) Education: Education programmes should include information on the risks that children might run in regard to the sale of children, pornography, child prostitution. This implies the provision of better training for persons holding posts involving supports for and protection of children in the fields of education, health, social welfare and the judicial system.

21. These are all important requirements conducive to closer familiarity with the phenomena of the sale of children, child pornography and child prostitution. Consequently, the Government of Lebanon sees no objection to supporting this draft, particularly since it supplements the content of the above-mentioned Convention on the Rights of the Child. However, there would be a subsequent need to promulgate local legislation reflecting this obligation and specifying all the basic measures needed to deal with and eradicate the sale of children, child pornography and child prostitution.

Mauritius

[Original: English]
[22 October 1997]

22. Mauritius made the following comments to the text of the draft optional protocol.

23. After paragraph 2 relating to the Protection of [children] [child victims], the following subparagraph should be inserted: "providing secure shelter to child victims, particularly in cases where the perpetrators and offenders are their parents or next of kin". In subparagraph (e), after the words "providing proper assistance", the words "and counselling" should be included.

II. COMMENTS RECEIVED FROM UNITED NATIONS BODIES, SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS

Council of Europe

[Original: French]
[7 November 1997]

24. As the European Social Charter is less well known than the European Convention on Human Rights, the Council of Europe felt it would be useful, before making comments, to describe this instrument briefly and then present it in greater detail.

25. The European Social Charter was signed on 18 October 1961. A revision gave rise to the adoption of three new instruments: the Protocol amending the European Social Charter (Turin, 1991), the Protocol providing for a system of collective complaints (Strasbourg, 1995) and the revised Social Charter (Strasbourg, 1996). 1/

26. The Charter is noteworthy for the contemporary relevance of the values it upholds, which ties it in with other international instruments that have been adopted recently, such as the United Nations Convention on the Rights of the Child. The Charter plays a direct role in the definition of and respect for the fundamental economic and social rights of children and young persons 2/ in most areas of life.

27. The text of the applicable provisions as well as the case law of the Committee of Independent Experts will therefore serve as a basis for a number of suggestions.

28. In the light of the above, *the Council of Europe supports in the first place improvement of the protection of children and young persons through adherence to the Organization's social standards, and suggests that States should be encouraged to respect existing international rules which contain provision for protection of children in the courts and in daily life, among which the European Social Charter occupies a special place. In this context, States might be invited to ratify the European Social Charter (revised) and in particular to accept the provisions relating to the protection of children and young persons.*

1/ The three instruments which were created as a result of the Charter revision process have not yet entered into force.

2/ Although the Charter does not say so explicitly, the Committee of Independent Experts considers that, except in the case of provisions which specify a different age, the *limit* of the individual sphere of application of the provisions that guarantee special protection for children and young persons is set at 18 years of age.

29. Firstly, it should be emphasized that several articles in the Convention for the Protection of Human Rights and Fundamental Freedoms (articles 3, 4 and 8) also militate in favour of all steps taken to combat phenomena such as the sale of children, child prostitution and child pornography.

30. Reference might also be made to the activities of the Council of Europe's Steering Committee for Equality between Women and Men in the context of efforts to combat trafficking in human beings for the purpose of sexual exploitation. For over six years, the Committee, which groups representatives of the Council of Europe's 40 member States, has been engaged in extensive work to combat trafficking in human beings, and particularly women, for the purpose of sexual exploitation. Trafficking in human beings for the purpose of sexual exploitation is a flagrant and large-scale violation of several fundamental rights of the individual. This involves, in the view of the Committee, serious breaches of the freedom and dignity of the individual, leading to inhuman and degrading treatment inflicted on the victims.

31. Against this background, a number of steps have been taken, including the preparation of a plan of action containing a series of proposals. Further to these activities, the Council of Europe's Committee of Ministers recently adopted terms of reference for a *Multisectoral Group on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation*. This Group, which is composed of experts on the media, social policy, human rights, migration, legal cooperation and crime problems, will have the task, under the authority of the Steering Committee, of preparing a draft recommendation or any other form of proposal containing a declaration of principles on action against traffic in human beings for the purpose of sexual exploitation. In its future work, the Group has been asked to attach particular importance to traffic in women and children, especially girls. The Group will hold its first meeting on 17 and 18 December 1997.

32. The problem area with which the Group is to deal falls in a different context, but one which complements certain of the aspects addressed in the draft protocol, such as action to combat the sale of children, child prostitution, protection of children and planned penal measures.

33. It should also be stressed that the draft optional protocol to the Convention on the Rights of the Child relating to the sale of children, child prostitution and child pornography, as well as the basic measures needed for their prevention and eradication, reflects the concerns expressed in Recommendation No. R (91) 11 of the Committee of Ministers of the Council of Europe concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults.

34. It goes without saying that strengthening international protection of children against these forms of exploitation is an objective which Governments, NGOs and international organizations should help to achieve. The draft optional protocol is an important step in that direction; it complements the existing international instruments in this field and can help to maintain the impetus created by the Stockholm Conference against Commercial Sexual Exploitation of Children (1996).

35. *As most of the international instruments in this field (including the above-mentioned Recommendation) relate exclusively to the sexual exploitation of children for commercial purposes, it might be appropriate also to cover the sexual abuse of children falling outside a commercial framework.* The recent cases of paedophile crimes committed in a number of (European) countries show that this issue requires more attention, not only at the national level but also at the international level.

36. The rapid development of new information and communication technologies (the Internet) may promote the even wider spread of child pornography. *Consequently the draft protocol should take appropriate account of this danger.*

37. Since child victims of sexual exploitation often suffer from what is known as "secondary victimization", in other words, the traumatizing effects of police investigations and court proceedings, it is a matter for satisfaction that these matters are given the attention they deserve in the draft optional protocol. *It might even be desirable to broaden this part of the draft protocol so as to take account of new experience as regards the protection of child victims and witnesses throughout the legal and administrative processes.*

38. The European Social Charter, and especially the Social Charter (revised), offers a legal framework which is specific to the protection of the fundamental economic and social rights of children and young persons and contains provisions which, because they have to do with the very foundations of social cohesion, contribute to more effective protection of the rights of children and young persons.

39. Broadly speaking, protection of children and young persons under the Charter may be said to be centred on the following fundamental rights:

40. Regulation of child labour (article 7, paragraphs 1-9), which involves:

- Setting the minimum age of admission to employment at 15 years, setting a higher age for dangerous or unhealthy activities and prohibiting the employment of children who are still subject to compulsory education in work which would deprive them of the full benefit of their education;

- Regulating the working conditions of young people who have reached the minimum age of admission to employment (duration of work, pay, holidays, night work and medical checks);

- Effective enforcement of regulations governing child labour, in particular by the labour inspectorate.

41. The adoption of measures appropriate to the special vulnerability of children and young persons to protect them against the physical and moral dangers to which they are exposed (article 7, paragraph 10, and article 17), such as sexual abuse and ill-treatment in general, inter alia in a commercial context and within the family (general questions posed by the Committee of Independent Experts on article 7, paragraph 10, and article 17 in the

Conclusions XIII-2, pp. 105 and 165). The Committee of Independent Experts has the task of evaluating national compliance by taking into account:

- Preventive measures and other measures, including penalties;

- Measures relating to the establishment, role and regulation of the various departments with competence in this area;

- Measures relating to access for children to the criminal and civil courts.

42. New article 17 of the revised Social Charter (The right of children and young persons to social, legal and economic protection) clearly requires the Parties to enter into a commitment to take all appropriate measures to protect children and young persons against negligence, violence and exploitation.

43. Recognition and realization of the right to vocational guidance (article 9) and the right to vocational training (article 10), including facilities for access to higher education, based solely on individual aptitude.

44. With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the new article 17 of the revised Charter requires the Parties to enter into a commitment to take all appropriate measures to ensure that children and young persons have the education and the training they need, and to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

45. A guarantee of economic and social security for all categories of the population, especially families and children. In this regard, monitoring by the Committee of Independent Experts covers the following elements:

46. Organization of a system of social protection designed to protect all the categories of the population, and especially families and children, against social and economic risks, in other words:

- To guarantee the right to social security (article 12), which involves not only the establishment and maintenance of a system of social security at a satisfactory level at least equal to that necessary for the ratification of International Labour Organization (ILO) Convention No. 102, but also the improvement of the system of social security;

- To promote the economic protection of the family, inter alia through social benefits and especially the granting of family allowances (article 16);

- To acknowledge the right of any person who is without adequate resources to social and medical assistance as an individual right (article 13). This requirement implies that the right to assistance should be coupled with a right of appeal to an

independent body and that the right of appeal should be an effective one, that is, that the right to assistance should be defined with sufficient precision so that it can be enforced through the judicial process.

47. The revised Social Charter adds the right to protection against poverty and social exclusion (article 30), which requires States to develop a coordinated and overall policy to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to employment, housing, training, education, culture and social medical assistance.

48. The amended article 17 of the revised Charter places an obligation on States, with more specific reference to protection of children and young persons, to provide protection and special aid for children and young persons who are temporarily or definitively deprived of their family's support.

49. Provision of family housing (article 16) and special protection for homeless children (article 17).

50. The revised Charter introduced a specific provision - article 31 - under which States recognize the right to housing, in other words, they enter into a commitment to take measures designed to eliminate homelessness gradually, to promote access to housing of an adequate standard and to make the price of housing accessible to those without adequate resources.

51. Protection of health - in other words, all measures aimed at removing the causes of ill-health, the provision of advisory and educational facilities in the health field and the prevention of diseases (article 11). This provision encompasses the entire population, but the Committee of Independent Experts works to ensure that special attention is given to protection of mothers and children, as well as to young persons in general, especially in schools.

52. *In the light of this list of standards and priorities, all of which are enshrined and encouraged in the Charter and the revised Charter, and contribute to preventing and combating the most intolerable forms of exploitation of children and young persons, and with a view to the adoption of an optional protocol concerning the sale of children, child prostitution and child pornography as well as the basic measures needed for their prevention and eradication, the Council of Europe supports:*

(a) Efforts to encourage States to strengthen the legal framework for the protection of children, in particular through improvement of the regulation of child labour, the definition of the most intolerable forms of exploitation and the adoption of specific criminal penalties in such cases;

(b) A pluralistic approach to the prevention of these forms of exploitation, bearing in mind the many causes of such phenomena: poverty and social exclusion, illiteracy, breakdown of the structure of the family, poor access to the legal system for children and young persons, etc.

International Labour Office

[Original: English]
[25 September 1997]

53. The Governing Body of the International Labour Office (ILO) took a decision to include in the Agenda of the session of 1998 of the International Labour Conference the question of child labour with a view to adopting new international labour standards in 1999, aiming, as a priority, at promoting measures to put immediately an end to the intolerable exploitation of children in a certain number of situations.

54. In accordance with the usual practice, the ILO, sent to the Governments a report on the current law and practice, supplemented by a questionnaire so as to gather their opinion - of the Governments and those of the employers' and workers' organizations - on the contents of new instruments. This questionnaire includes, among the questions as regards the possible contents of the future ILO instruments, point regarding the use, engagement or offering of a child for prostitution, production of pornography or pornographic performances.

55. Replies to this questionnaire have been received from more than 100 member States, demonstrating the strong international attention on the issue. The ILO is now analysing them and preparing another report to become the basis for discussion at the Conference, in June 1998. This report will be available at the beginning of next year.

56. It was recalled that the idea of the minimum age for dangerous or hazardous work ("employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons"), which should not be lower than 18 years, is already enshrined in the existing standards like article 3 (1) of the Convention concerning Minimum Age for Admission to Employment, 1973 (No. 138) and is also being suggested as a content of the new instruments described above.

United Nations Educational, Scientific and Cultural Organization (UNESCO)

[Original: English]
[1 October 1997]

57. UNESCO has developed a number of educational programmes for street children which include elements concerning both the child's right to be free from sexual abuse and the training of professionals in the work of prevention and rehabilitation. Insofar as school systems are concerned, again, UNESCO has been active in preventive education, and where appropriate has encouraged Ministries of Education to include elements of sex and AIDS education into school curricula.

58. UNESCO noted that there is not enough emphasis in the report of the Working Group on the importance of education, particularly adult education. Education is missing in the report as an essential element for the prevention of sale of children, child prostitution, child sex tourism and child

pornography. Education, and especially adult education, play an important role both in eradicating consumer patterns which encourage the demand for sexual exploitation of children and in improving the decisions which parents make regarding their children's lives.

59. In this respect, the report could include the commitment of member States to adopt diverse forms of organized education, teacher training programmes and training for adults.

60. UNESCO has also contributed to the report of the Special Rapporteur on the sale of children, child prostitution and child pornography submitted to the General Assembly at its fifty-second session and to be submitted to the Commission on Human Rights at its fifty-fourth session.

World Bank

[Original: English]
[26 September 1997]

61. The World Bank expressed its appreciation for the request and the opportunity to follow the development of the Convention of the Rights of the Child in the process.

62. Traditionally, the World Bank has not been involved in the debate on human rights issues. As a financial lending institution, the topic of rights per se is outside of its field. The working group report also goes into details that are beyond the World Bank's main focus. However, the World Bank acknowledges the complement between the normative standards and ideals promoted by the Convention, and the objective of the World Bank to maximize children's potential as part of its strategy of poverty reduction and economic development.

63. The World Bank commends the work in progress and would like to extend its general support and encouragement for the work taking place in our common struggle to improve living conditions for the poorest and most marginalized children in the world.

III. COMMENTS RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

American Association of Jurists

[Original: Spanish]
[6 October 1997]

64. The American Association of Jurists (AAJ) pointed out at the first session of the Working Group in November 1994 that its mandate derived from paragraph 17 of resolution 1994/90 of the Commission on Human Rights, which refers to guidelines for a possible draft optional protocol ... on the sale of children, child prostitution and child pornography, as well as the basic measures needed for their prevention and eradication. It took the view that the mandate had to be interpreted within the whole context of the Commission's

resolution, which mentioned, inter alia, the Vienna Declaration and Programme of Action, in which reference is made to the sale of children and their organs (Vienna Declaration and Programme of Action, I.21).

65. The AAJ went on to point out that the Group's mandate was wide-ranging, since it had to concern itself with the sale of children whatever the purpose, that is to say, whether it was for sexual or economic exploitation, for the sale of their organs or for their illegal adoption, and also obviously had to deal with child pornography and the basic measures for the prevention and eradication of these offences.

66. In the opinion of the AAJ, it could not be maintained that the Working Group's mandate did not include fraudulent adoption and the traffic in organs. This matter had not been decided and in the Group's debates there were still States that wanted to include both subjects and other States that were opposed.

67. It was even maintained, as an argument for not including the traffic in organs, that it had not been proved that such a traffic existed. However, there are many reasons for asserting that this subject cannot be omitted: legislation in many countries treats the sale of organs as a criminal offence; the Assembly of the World Health Organization approved in May 1989 a resolution (WHA42.5) on the prevention of the sale of human organs for transplantation, which specifically referred to children and other vulnerable groups; in 1991 the same Organization approved Guiding Principles on Human Organ Transplantation; and in 1993 the European Parliament approved a resolution on prohibiting trade in transplant organs.

68. A report of the Secretary-General of the United Nations in 1995 entitled "Organ Transplant" (E/CN.4/Sub.2/AC.2/1995/6), which was prepared for the Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, contained information provided by the United Nations Office at Vienna, which is quoted "in extenso" below.

69. After pointing out that, in its resolution 3/2 entitled "International Traffic in Minors", the Commission on Crime Prevention and Criminal Justice, based in Vienna, had decided that the international traffic in minors should be considered in the context of the discussion of the question of organized transnational crime, the statement went on to make the following points.

70. "Furthermore, the Secretary-General in his report [to the Commission on Crime Prevention and Criminal Justice, at its second session], on the impact of organized criminal activities upon society at large noted that at present no country was able to meet the demand for organs adequately and waiting lists were growing at a faster rate than the supply. For instance, an estimated 85 per cent of the patients accepted for dialysis in Ireland received transplants in the first year, whereas in the United States only about 25 per cent of such cases resulted in transplants and in Japan the figure was less than 10 per cent. In the United States alone, statistics indicated that as of June 1991, 24,000 people were on waiting-lists for transplants. In Australia, the number of people requiring kidney transplants was about 2,000 at the present time, with about 400 transplants performed each year. The

average waiting time for such a transplant was three years. This was a situation which organized crime was bound to exploit, as resort to exploitative and criminal practice could generate high profits where the number of available organs was insufficient.

71. "The Director of the Australian Institute of Criminology was quoted as saying, 'Not surprisingly, a black market ... has developed in which organs fetch high prices'."

72. The report from the United Nations Office at Vienna continues: "The large number of destitute and homeless persons, including children, found in urban areas, particularly in developing countries, provided a source of such transplant organs. The black market was bound to grow as technological advances extended the preservation of organs after removal, so that transport could be provided over long distances."

73. The above-mentioned report of the Secretary-General, which contains the report from the United Nations Office at Vienna, also provides the following information from the International Criminal Police Organization (INTERPOL):

> "INTERPOL declared that specific information has been provided by INTERPOL in Brazil which indicated that Brazilian children were adopted by foreign couples allegedly for the purpose of trafficking in human organs. The sale of human organs is a very sensitive issue and countries affected by this form of criminal activity (such as South America and a number of Eastern European countries) are very reluctant to send relevant information on reported cases."

74. In any event, even if such a traffic did not actually exist, it would not therefore cease to be a crime. It is as if a country where no murders were committed were to delete the corresponding crime from its penal code.

75. The question of the sexual exploitation of children and their use in pornography has given rise to serious controversies both within the Working Group itself and outside in society at large. For example, it has been maintained that if the child has arrived - depending on the particular national legislation - at the age of consent in sexual matters, which in some countries is set at the age of 12 or 13, his or her sexual exploitation or use in pornography would not be a punishable offence.

76. Such was the view put forward by the Government of Denmark in its observations submitted to the Working Group on the subject of child pornography, in which, after pointing out that although children in Denmark generally attain majority at the age of 18, the age of consent in sexual matters is 15, it went on to say:

> "The underlying reason behind the Danish criminalization of child pornography is to protect children from the sexual crimes which are committed during the production of the pornographic material. If the depicted child is 15 years or older and has consented to the act, no sexual crime has been committed" (E/CN.4/1996/WG.14/2/Add.2).

77. It should be pointed out that article 3 of ILO Minimum Age Convention 138 establishes the age of 18 as the minimum age for undertaking work that might affect the morals of young persons, with the result that Denmark, although not a signatory to that Convention, is infringing one of its provisions. This is so because, according to article 19 (5) (e) of the Constitution of the International Labour Organization, even States that have not acceded to a convention are obliged to submit reports on its implementation and the tendency of the Governing Body of the ILO has been to request the submission of reports at more frequent intervals on the Conventions that are considered fundamental - which includes Convention 138 - even from States that have not ratified them (See the Report of the Director-General of ILO, 1997, I, A). Consequently, Denmark - or any other country - cannot act as if ILO Convention 138 did not exist.

78. According to an article that appeared in Le Monde Diplomatique in March this year, attempts are being made to gain acceptance within the European Union for the idea that if there is consent on the part of the person prostituted, that is to say, if there is no forced prostitution, the procurer would not be a criminal, but a respectable "sexual businessman".

79. If such an approach were to prevail, together with the view that places the prostitution of a minor on the same plane as the minor's legal capacity to give consent in sexual matters, we would find ourselves in a situation where the corrupter of a minor aged 15 - or even aged 12 or 13 in some countries - would not be committing any crime, unless it were proved that he had coerced the minor.

80. The American Association of Jurists shares the predominant view in the criminal field that the corrupter of minors and the procurer are criminals, whatever the age of the person exploited, and believes that the person corrupted or prostituted, especially if that person is a minor, is not a criminal, but a victim who needs help and protection.

81. In this question two things are confused, which in fact have nothing to do with one another: sexual consent given freely in a loving relationship and the submission of a minor to sexual or sexually motivated exploitation for economic gain or under coercion.

82. The American Association of Jurists considers that in child prostitution and child pornography the lack of consent must be presumed juris et de jure, even though the child has reached the legal age of consent in sexual matters. A matter closely connected with the sexual exploitation of children and their use in pornography is that of practising paedophiles and their procurers.

83. The term "practising paedophile" is used here rather than simply "paedophile" in order to distinguish him from the person who suffers what psychiatrists define as a sexual disorder consisting in feeling sexually attracted by children, but which does not manifest itself in his behaviour.

84. The approach taken in various fields, including the judicial field, towards the subject of practising paedophiles and towards the sexual abuse of minors in general is symptomatic of a profound moral crisis. Thus, in the name of so-called sexual freedom, attempts are made to explain away brutal

attacks against the dignity of the child and against his or her fundamental right to be and to live as a child, which consists in being not a miniature adult but a human being qualitatively different from an adult.

85. Nowadays, at a time when many cases of active paedophilia have come to light, in the extensive public debate that has arisen some experts and specialists maintain that paedophiles that have abused children are not guilty of crimes, but are merely ill.

86. The courts in some countries do not appear to recognize the fact that in cases of sexual abuse against minors the legal asset whose protection must be paramount is the physical and moral health of the children and they give judgements that enable paedophiles and other offenders against minors to be released into society within a short period of time and to re-offend by finding new victims.

87. The case of a person who, in 1992 in Belgium, kidnapped, raped and murdered a 9-year-old girl whose body was only found in 1997 in the garage belonging to the murderer is tragic evidence of the dangers of such a policy. In the trial that began this year this person was declared not to be responsible for his actions (despite the fact that he worked normally in his garage-service station) and will therefore not be punished under the criminal law. According to the newspapers his own defence lawyer will ask for him to be committed to a psychiatric hospital, as psychiatric experts have recommended. However, the most serious aspect of this case is that in 1984 this same individual kidnapped and raped three children, but was only tried for offending public decency and was released after 50 days in detention.

88. When the girl disappeared in 1992, the police questioned the individual (since they were almost neighbours), but their suspicions were not aroused because the record with the person's case history had disappeared from the files. Only when there was a public outcry in Belgium was the case reopened and the perpetrator of the rape and murder of the young girl discovered.

89. The American Association of Jurists takes the view that a paedophile who has committed the offence of violation of minors should be punished in proportion to the extreme gravity of the crime committed, unless it is proved in the course of the corresponding trial that he is not imputable, that is to say that he is not responsible for his actions, in which case he will not be punished under the criminal law, but in view of the fact that he has committed an extremely grave offence measures will have to be taken to ensure that he does not re-offend by committing him to a psychiatric hospital.

90. Society must give priority to the physical and moral health and life of children and must provide effective protection so that it is not irreparably harmed by sexual abuses. In most penal codes a sexual or sexually-significant relationship with a minor who has not reached the legal age of consent is a crime comparable to the violation of an adult, but aggravated by the fact that the victim is physically and morally more vulnerable, or constitutes a separate criminal offence - rape - depending on the age of the minor. It is clear that such crimes must be severely punished, even if they are not

accompanied by aggravating circumstances such as violence, deception, coercion or other offences which may lead to the death of the victim, as has occurred in no few cases.

91. The American Association of Jurists believes - as do many eminent jurists - that the law lays down minimum ethical standards, that is to say that most legal rules establish a threshold beyond which society does not allow certain moral principles to be openly transgressed. These moral principles obviously have cultural roots, but also often have an objective basis, as is the case with the physical and mental well-being of a child.

92. Unfortunately, however, we are living at a time - although there are some signs that it may be transitory - that is totally dominated by the ideology of the market, according to which everything in human society has or may acquire an economic value. This concept of society is very sympathetic to theories that tend to decriminalize, minimize or weaken the suppression of national and international forms of trafficking that bring huge profits, such as the sale of children for sexual exploitation, for their use in pornography or for their exploitation as child labour.

93. At the meeting of the Working Group in February 1997, the AAJ reiterated its view that the criminal activities with which the draft optional protocol is concerned, in particular the international traffic in children, whatever its purpose, and sex tourism involving minors, should be classified as international crimes, firstly, because the iter criminis is normally cross-frontier and, secondly, because the offending conduct violates legal assets recognized by the international community as being fundamental, such as the life, physical well-being and dignity of the human person.

94. More specifically, the AAJ maintained that the draft optional protocol should include the following offences, which should be classified as international crimes:

(a) the traffic in and/or sale of children, particularly for their economic or sexual exploitation, for their unlawful adoption or for purposes of removing from them organs, tissues or body material;

(b) promoting or facilitating the prostitution or corruption of children;

(c) using children for performances or the production of pornographic objects or visual or auditory material.

95. The expression "traffic in and/or sale" of children has been employed, because what characterizes the unlawful act is not the existence of pecuniary compensation, but the cession of a minor to a third party by those who have the legal care of the child, or the appropriation of a minor by a third party without the consent of the child's legal guardians, for purposes of economic or sexual exploitation, unlawful adoption or the removal of organs, tissues or body material. Accordingly, the AAJ proposed to the Working Group that the words "traffic in and/or" should be added before the word "sale", or in place of traffic, the word "trade".

96. With regard to the offence of promoting, facilitating or organizing child prostitution, the AAJ suggested to the Group that in the expression "performance of sexual acts" by the child the words "or sexually significant" should be inserted before "acts", so that the offence would include acts that some national laws do not regard as sexual acts, but whose sexual significance is obvious and which produce serious damage to the child's psychological health.

97. The AAJ also insisted that it should be made clear in the draft text that this offence, as in the case of child pornography, remained as such even though there was real or presumed consent on the part of the child, and even when he or she had reached the age of sexual consent according to the respective national legislation in force.

98. The AAJ also stated that the economic exploitation of children must be understood as being work by children carried out in violation of the International Labour Conventions, including forced labour and, in particular, those conventions that apply specifically to children, such as ILO Minimum Age Convention 138.

99. The AAJ argued in favour of the inclusion of the two purposes in the traffic of children that encountered most resistance in the Working Group: unlawful adoption and the extraction of organs, tissues or body material.

100. As for sex tourism involving minors, which is envisaged in the draft optional protocol now being prepared, the AAJ pointed out that rather than one single offence it included several different offences: (1) that committed by the agency promoting such tourism, which could be instigation to the violation of minors; (2) that committed by the procurer(s) who prostitute the children; and (3) that committed by the user of such services, which is sexual abuse or violation of minors.

101. The AAJ considers - and made this point in the Working Group - that the description of these offences in the protocol should be precise, in an attempt to establish a proper classification of different types of crimes. Moreover, this task should not be left exclusively to national laws, since as far as some particularly grave offences are concerned further steps need to be taken towards the development of international criminal law with its own classification of offences, so as not to leave large gaps that will enable people to either act with impunity or suffer arbitrary incrimination.

102. With regard to active paedophilia, the AAJ proposed that the draft protocol should include an article stating that sexual or sexually-significant relations with a minor who has not reached puberty, even if there is actual or presumed consent by the minor, constitute a grave offence equivalent to violation and should be severely punished.

103. Although the mandate given by the Commission on Human Rights to the Working Group does not include the subject of a complaints procedure the AAJ proposed to the Working Group that the draft optional protocol should include a procedure for communications and complaints to be brought before the Committee on the Rights of the Child to be examined, and should enable complaints concerning violations of any of the rights contained in the

Convention to be submitted by States and by victims or their representatives or by any person or group of persons or non-governmental organization having consultative status with the United Nations and/or legally recognized in any of the States parties.

104. The AAJ continued to urge the Commission on Human Rights during the session in March-April 1997 to extend the mandate of the Working Group with a view to drawing up a complaints procedure. The AAJ, as a concrete contribution to the discussions of the Working Group, circulated during the meeting of the Group in February 1997 a preliminary text of the draft optional protocol.

NGO Group for the Convention on the Rights of the Child: Focal Point on Sexual Exploitation of Children

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[25 September 1997]

105. The NGO Group is submitting a study reflecting the simulated examination of the draft protocol and a representative sample of conventions relating to human rights and in particular to the sexual exploitation of children. Its purpose is to identify similarities and parallels between the various legal instruments in force and the draft optional protocol.

106. It is particularly important to refer in this study to the Declaration and Agenda for Action adopted by over 120 countries at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996, which constitute a spectrum of the measures recommended to States and all segments of society. Indeed, "The Agenda for Action aims to highlight existing international commitments, to identify priorities for action and to assist in the implementation of relevant international instruments".

107. The NGO Group, in preparing its comparative study, analysed various points dealt with in the draft protocol and indicated those covered by the draft and by existing conventions which reflected the same idea. Obvious similarities are mentioned and a detailed table was prepared. 3/

Chapter II. Definitions

108. Chapter II of the draft protocol deals with the sale of children, child prostitution, pornography involving children and sex tourism. These subjects have been covered by three international instruments since 1904.

109. Article 1 of the International Agreement for the Suppression of the "White Slave Traffic" states that:

> "Each of the Contracting Governments undertakes to establish or name some authority charged with the coordination of all information relative to the procuring of women or girls for immoral purposes abroad; this

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3/ Available for consultation in the Secretariat.

authority shall be empowered to correspond direct with the similar department established in each of the other Contracting States."

110. Article 1 (d) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery refers to "Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour".

111. Article 34 of the 1989 Convention on the Rights of the Child stipulates that: "States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse", and its paragraphs (a), (b) and (c) add that States parties are to take all appropriate measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials.

Chapter IV: Penalization and prosecution

112. According to article 1 of the 1910 International Convention for the Suppression of the White Slave Traffic:

> "Any person who, to gratify the passions of others, has hired, abducted or enticed, even with her consent, a woman or girl who is a minor, for immoral purposes, even when the various acts which together constitute the offence were committed in different countries, shall be punished."

113. Article 2 of the International Convention for the Suppression of the Traffic in Women and Children, as amended by the Protocol of 12 November 1947, states that: "The High Contracting Parties agree to take all measures to discover and prosecute persons who are engaged in the traffic in children of both sexes ...". Moreover, under article 3 of this Convention: "The High Contracting Parties agree to take the necessary steps to secure punishment of attempts to commit, and of acts preparatory to the commission of, the offences ...".

114. Article 1 (1) of the 1923 International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications states that it shall be a punishable offence "for purposes of or by way of trade or for distribution or public exhibition to make or produce or to have in possession obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematographic films or any other obscene objects".

115. Article 2 states that: "Persons who have committed an offence falling under article 1 shall be amenable to the courts of the Contracting Party in whose territories the offence, or any of the constitutive elements of the offence, was committed". Lastly, article 4 states that those of the Contracting Parties whose legislation is not at present adequate must take the measures necessary for this purpose.

116. Article 3 of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others stipulates that "To the extent permitted by domestic law, attempts to commit any of the offences referred to ... shall also be punished". Article 12 states that: "The offences ... shall in each State be defined, prosecuted and punished in conformity with its domestic law". The draft protocol, in chapter IV entitled "Penalization and prosecution", states that "Each State party shall ensure that the following activities, as defined in chapter IV, are offences under its criminal law ...".

117. Article 27 of the 1949 Convention specifies that "Each party to the present Convention undertakes to adopt ... the legislative or other measures necessary to ensure the application of the Convention", and paragraph 3 of chapter IV of the draft protocol stipulates that "States parties shall undertake measures and adopt such legislation as necessary aimed at prohibiting the production of, access to and dissemination of material containing, promoting and encouraging the sale of children, child prostitution and child pornography".

118. Here it is clear that the content of certain articles of the 1949 Convention has not been reproduced in the draft protocol, for example in articles 1, 2 and 4, which enumerate the persons punishable by the Contracting Parties to this Convention. Article 5 states that aliens are entitled to be parties to proceedings upon the same terms as nationals.

119. Article 6 mentions the abolition of any law and regulation by virtue of which persons engaging in prostitution are subject to special registration. Article 7 explains that previous convictions in a foreign State are to be taken into account. Article 13 of the Convention states that "The parties to the present Convention shall be bound to execute letters of request ... in accordance with their domestic law ...". Article 17 deals with immigration and emigration measures. Article 20 provides for the "supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution".

<u>Chapter IV: Protection of [children] [child victims]</u>

120. Article 6 of the 1921 International Convention for the Suppression of the Traffic in Women and Children states that the parties must prescribe such regulations regarding licensing and supervision of employment agencies and offices as are required to ensure the protection of women and children seeking employment in another country.

121. Under article 2, paragraph 2, of the Convention on the Rights of the Child "States parties shall take all appropriate measures to ensure that the child is protected ...", and article 6 adds that "every child has the inherent right to life". According to article 17 (e), States parties are to "encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being ...".

122. According to article 19, "States parties shall take ... legislative ... measures to protect the child from ... violence ... maltreatment or exploitation ...".

123. Article 20 states that "A child temporarily or permanently deprived of his or her family environment ... shall be entitled to special protection and assistance provided by the State".

124. Article 23 requires that "a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity ..." . Resolution 1997/78 adopted without a vote by the Commission on Human Rights on 18 April 1997 covers various subjects affecting the rights of the child, one of which concerns children with disabilities. Moreover, at the next session of the Committee on the Rights of the Child (22 September-10 October) the discussions during "theme day" will deal precisely with the main elements of article 23 and general principles such as non-discrimination and the best interests of the child, the right to life and to development.

125. Article 34 of the Convention calls for the protection of the child "from all forms of sexual exploitation and sexual abuse".

126. Article 32, paragraph 1, recognizes the right of the child "to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health ...".

127. According to article 32, paragraph 2, "States parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States parties shall in particular: provide for a minimum age ... for admission to employment; provide for appropriate regulation of the hours and conditions of employment; provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article."

128. Article 35 calls upon States parties "to take all appropriate ... measures to prevent the abduction of, the sale of or traffic in children ...".

129. Article 39 stipulates that "States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of ... exploitation or abuse ... in an environment which fosters the health, self-respect and dignity of the child."

130. Since the commercial sexual exploitation of children is connected with economic exploitation, reference should be made to the documents dealing with this problem. ILO report IV (1) of 1996 reveals that only 33 of ILO's 155 member States had set a basic minimum age for admission to employment or work. Most of the countries which fix a minimum age for work are European.

131. Article 3 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War states clearly that the parties to an armed conflict not of an international character must treat persons taking no active part in the hostilities humanely.

132. Under article 14 of this Convention, "Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men".

133. Articles 51 and 52 of the same Convention state that prisoners of war must be granted suitable working conditions and that, "Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature".

134. Article 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 states that protected persons are entitled, in all circumstances, to respect for their persons and that women shall in particular be protected against rape, enforced prostitution or any form of indecent assault.

135. Article 1 of the revised Hague Convention of 1961 concerning the protection of infants deals with measures to protect both their person and their property.

136. Article 5 of this Convention gives examples of cases in which the habitual residence of an infant is transferred in such a way that it does not affect his protection. Such transfer is based on international cooperation providing protection to infants who are not in the country of their habitual residence, such as an infant taken to the territory of another State with a view to his or her commercial sexual exploitation. Article 5, paragraph 2 adds that the authorities of the State of the new habitual residence are competent.

137. Chapter II, entitled "Prisoners of war", paragraph 4, of the Convention respecting the Laws and Customs of War on Land, annexed to the Hague Convention No. IV of 1907 states that prisoners of war (including children) must be treated humanely.

Chapter V: International cooperation and coordination

138. Articles 14, 15, 18 and 19 of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, cover the same ground as chapter V on cooperation, and most of the subjects dealt with in chapter V of the draft protocol are already covered by the 1949 Convention.

139. Article 17 (b) of the 1989 Convention on the Rights of the Child requires States parties to "encourage international cooperation in the production, exchange and dissemination of such information ...".

140. Article 23, paragraph 4, emphasizes that States parties must promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological treatment.

141. Under article 35, States parties are to "take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children ...".

Chapter VI: Assistance, rehabilitation and compensation

142. Article 8, paragraph 2, of the 1989 Convention on the Rights of the Child mentions that "Where a child is illegally deprived of some or all of the elements of his or her identity, States parties shall provide appropriate assistance ...".

143. Article 39 of this Convention stipulates that "States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of ... exploitation, or abuse ..."

Chapter VII: Information, education and participation

144. Certain subjects are not dealt with in the 1949 Convention but are covered by the draft protocol, one example being chapter VII concerning information, education and participation. However, they are all covered by the two Programmes of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and for the Prevention of Traffic in Persons and the Exploitation of the Prostitution of Others. Moreover, at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm, a Declaration and Agenda for Action were adopted by over 120 countries in order to protect the rights of children, particularly by the implementation of the Convention on the Rights of the Child. The Agenda for Action in itself constitutes a major achievement in the promotion of the rights of the child in all areas: cooperation, coordination, prevention, protection, rehabilitation, reintegration and participation.

145. The other subjects covered by the draft protocol which should be updated in the light of recent technological advances are pornography and sex tourism.

146. Article 17 of the Convention on the Rights of the Child adequately covers chapter VII of the draft protocol in respect of information, education and participation.

Conclusions and recommendations

147. It will be noted that certain international instruments in force go much further than the draft optional protocol in respect of the sale of children, child prostitution, child pornography and child sex tourism.

148. The 1989 and 1949 Conventions are particularly useful, and the latter should be ratified by a larger number of States.

149. The 1989 Convention on the Rights of the Child is extremely broad in scope and has been ratified by the largest number of countries (190 by August 1997) precisely because it does not encroach upon the sphere of purely domestic legislation. On the other hand, the present wording of the draft optional protocol, which is more detailed, is likely to be at variance with the regulations of States which, anxious to protect their sovereignty, will inevitably enter reservations.

150. It would not appear that the content of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others explains why it has been ratified only by a modest number of countries (70 at the present time). The real reason is probably failure to give it wide publicity and draw attention to its importance. Thought could also be given to the possibility of supplementing it with a new or existing monitoring mechanism, since in that way its implementation could be verified by the Committee on the Rights of the Child as well as by the Committee on the Elimination of Discrimination against Women in dealing with the problems of girls.

151. A draft optional protocol which, by definition, supplements the Convention, should make good any shortcomings and clarify any ambiguity in existing international instruments. To this end, the following points could be examined:

Harmonization of the age of majority. The minimum age for sexual consent invariably gives rise to confusion.

Clarification of certain expressions such as "child pornography" and strengthening the right of the child to protection against pornography.

Clarification of matters relating to the sexual exploitation of children with disabilities.

Penalization of the sale of children and any form of sexual exploitation of children, with emphasis on the fact that child victims should be heard and assisted.

Proposal to promote closer cooperation between States parties to put an end to the transboundary exploitation of children, particularly in the context of new technologies such as Internet. This applies as much to questions of child prostitution and pornography as to the sale of children for purposes of sexual exploitation.

Consideration of specific problems affecting girls in regard to statistics not broken down by sex, access to information and social services, and in general discrimination against girls, which were discussed at length in the Declaration and Platform of Action at the Fourth World Conference on Women held at Beijing in September.

152. In conclusion, reference may be made to two basic international instruments, namely, the programme of action on the traffic in persons and the exploitation of the prostitution of others, adopted by the Commission on Human Rights at its fifty-second session (April 1996) and the Declaration and Agenda

for Action adopted unanimously at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm in August 1996. These two instruments, although not legally binding on States, could be used to evaluate the quality of the protection given to the rights of the child, to develop and protect the rights of child victims of sexual exploitation and to coordinate efforts with other programmes aimed at protecting the rights of the child.

153. This study has revealed that international legal provisions and instruments protecting the child against sexual exploitation exist, and have indeed been in existence for a long time. For this reason,

(a) They must be brought to the attention of national officials and the public at large so as to promote their ratification by the largest possible number of States;

(b) Efforts must be made to ensure that the domestic legislation of States which ratify them is brought into line with their provisions, the letter as well as the spirit of which must be implemented; and

(c) An optional protocol should be proposed to make good the shortcomings and ambiguities of existing texts.

World Alliance of Young Men's Christian Association

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[16 September 1997]

154. In the view of the organization, the issue of the sale of children and child prostitution is abhorrent practice that must be banned by provisions of national legislation, all over the world. However, legislative provisions do not by themselves achieve the desired results, nor can governments by themselves successfully monitor the implementation of such abusive practices.

155. Civil society must be encouraged and supported in programmes that deal with the root causes of the problems leading to the sale of children and child prostitution.

156. It needs also to be enabled to monitor violation of the legislation and forward complaints to an independent governmentally sanctioned authority which might include eminent citizens drawn from among academics, judges, legal activists, social workers, women's organizations, religious leaders and development workers.

157. The Office of the High Commissioner for Human Rights would need to establish a special fund that supports governmental and non-governmental efforts in the implementation of these programmes.

158. Governmental and non-governmental efforts towards intensive economic development programmes in areas from where children tend to be taken into child prostitution must be supported by adequate funding mechanisms at national and international levels.

159. Awareness programmes should be instituted to draw public attention to the problems and possible solutions as a means to enable people to influence public policy.

160. The question of "international adoption" programmes must also be studied by a special rapporteur under the United Nations Centre for Human Rights to ensure that there are no corrupt practices and undue exploitation of vulnerable parents from weak socio-economic backgrounds.

161. The issue of child pornography is one that is being used to tear the moral fabric of society. But it is also one that has economic dimensions of an abusive nature. It is always children from vulnerable sections of society who are victimized. It releases sexually abusive instincts in people who are frustrated by social conditions of which they are victims. Child pornography has the potential for social destabilization and must be confronted on the same footing as the above-mentioned issues.

- Watch-dog groups composed of eminent citizens known for their contribution to values and issues of justice, especially those affecting women and children, must be established with governmental support.

- Adequate legislation must also be pursued and where such legislation might exist, it must be reviewed to ensure that loopholes are eliminated.

162. In both the above issues, there must be an attempt to promote widespread public awareness of the problems using the media, NGO forums, etc., and other public platforms.

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